

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
AUG 5 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
RMW

RAUL CAMPOS,

Petitioner,

v.

ROBERT HOREL, Warden,

Respondent.

No. **CV 08 3750**

PETITION FOR WRIT OF HABEAS
CORPUS (28 U.S.C. section 2254)

E-filing

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17 **Respondent.**

No. _____

**PETITION FOR WRIT OF HABEAS
CORPUS (28 U.S.C. section 2254)**

18
19
20
21 Petitioner, through his counsel, files this petition pursuant to 28 U.S.C. section
22 2254 *et seq.*, and alleges as follows:

23 **PRELIMINARY ALLEGATIONS**

24 **I.**

25
26 Petitioner is currently confined at Pelican Bay State Prison in Crescent City,
27 California.
28

II.

A. In an information filed on March 27, 2003, the District Attorney of San Mateo County accused Raoul Campos and Alfredo Valenzuela of four counts of murder. (Cal. Pen. Code, § 187.) Arming (Cal. Pen. Code, § 12022(a)(1)) and personal, intentional discharge of a firearm (Cal. Pen. Code, § 12022.53(c)) were alleged against both men on the four counts of murder; also alleged were special circumstances for the murder in the course of attempted robbery (Cal. Pen. Code, § 190.2(a)(17)), murder in the course of burglary (§ 190.2(a)(17), and multiple murder (§ 190.2(a)(3)). (CT 206-210)

B. Trial for each defendant was severed. On December 16, 2004, petitioner Campos was found guilty of four counts of first degree murder, attempted robbery, and residential burglary. All enhancement and special allegations were found true (CT 1145-1148, 1350-1362), except for the arming enhancement, which had been dismissed by the prosecution just before the beginning of the case in chief for the defense. (CT 1139-1140.) On February 25, 2005, petitioner was sentenced to an aggregate term of life without possibility of parole with an additional term of twenty years. (CT 1386-1388; RT 1047-1049.)

C. Petitioner appealed his conviction to the California Court of Appeal, First Appellate District, which, on February 27, 2007 affirmed his convictions. On April 2, 2007, a petition for review was filed in the California Supreme Court, and review was denied on May 9, 2007.

III.

The federal issues presented to the California Court of Appeals and the California Supreme Court were as follows: A.) Incriminating statements made by petitioner while in effective custody, but without the prelude of any *Miranda* warnings required suppression of these statements pursuant to the Fifth Amendment; B.)

1 evidence from the trunk of petitioner's car was seized in violation of the Fourth
2 Amendment and should have been reversed.

3
4 **SUMMARY OF EVIDENCE PRESENTED**
5 **AT STATE TRIAL**

6 **IV.**

7 The following is a summary of the prosecution case at petitioner's state court
8 trial:

9 Javier Vaca was a mid-level cocaine distributor. Although he lived in San
10 Francisco with his girlfriend, Suguey Caro, their baby, and Caro's two brothers, Vaca
11 maintained for business an apartment in San Bruno, rented in the name of his cousin,
12 Jaime De Alba. The San Bruno apartment was strictly a redistribution center where
13 the purer cocaine was diluted, repackaged, and then redelivered further down the retail
14 line. No transactions were conducted at the San Bruno apartment in order to maintain
15 security against police and would-be robbers. Emilio Flores, Roberto "Pecas" Ramos,
16 and Alberto Munoz all worked for Vaca at the San Bruno apartment. Vaca's supplier
17 was Jorge "Chico" Hernandez, who brought a shipment up from Mexico to Northern
18 California about four times a month. (RT 208-209, 224-225, 312-316, 738-746.)
19 Because Hernandez had no driver's license, he paid his cousin, Alfredo Valenzuela, to
20 drive for him on these "road trips." (RT 705-706.)

21 Suguey Caro testified that on one occasion in August, 2001, at the San Francisco
22 apartment she shared with Vaca, she overheard an argument between Hernandez and
23 Vaca. The dispute was over payment. Hernandez claimed he was owed \$45,000;
24 Vaca refused to pay; and Hernandez threatened to return with some people to kill
25 Vaca. (RT 213-215.)

26 Vaca took the threat seriously enough to have Caro move in with his mother,
27 who was living in Chico. Caro nonetheless came back on occasion to San Francisco to
28 visit her brothers, and on one of these sojourns in November, she again overheard an

1 argument between Hernandez and Vaca, again over money. Vaca refused to pay
2 Hernandez because Hernandez's "work was worthless." He conceded he would make
3 a partial payment directly to Hernandez's boss, Antonia, because he did not trust
4 Hernandez to hand over the money. Hernandez, according to Caro, repeated his threat
5 to come back and kill Vaca. (RT 216-220.) Between August and December 2001,
6 Caro also witnessed Vaca on the telephone several times with Hernandez arguing
7 about money. (RT 220-221.)

8 Mark Hachman, who lived in apartment N-6, which adjoined Vaca's apartment
9 N-8 in San Bruno, testified that between 4:30 and 5 p.m. on January 11, 2002, he heard
10 a group of people tramping up the outside stairway and entering the neighboring
11 apartment. Hachman, through the wall of his apartment could hear a loud argument in
12 Spanish accompanied by some physical commotion. Within minutes, someone in that
13 apartment turned up the volume of the music, through which Hachman heard six or
14 seven popping noises. The music was turned down, and Hachman could hear the
15 sound of footsteps descending the stairway. (RT 298-304.)

16 Five or ten minutes after this, Oscar and Iram Caro, Sugey's brothers, drove to
17 the San Bruno apartment. They had been called by Vaca to come pick up some
18 money. Oscar first telephoned from outside to advise Vaca that they were there.
19 When no one answered, Oscar ascended the stairs, walked through the open door of
20 the apartment and saw the bodies of Vaca, Ramos, Munoz, and Flores lying dead on
21 the floor of the apartment. Instead of calling the police, Caro telephoned Jaime De
22 Alba, who went over to the San Bruno apartment at about 7 p.m. and called 911 when
23 he re-discovered the bodies. (RT 231-241, 268, 316-318, 328.)

24 All the bodies, except Flores' were face down with the hands and feet bound by flex
25 ties. Vaca, Ramos, and Munoz were killed in this position by shots fired with the
26 muzzle of the gun pressed to the back of the head. Flores, who had a blunt trauma
27 wound to the top of his head, was killed by four shots to the chest. (RT 231-240, 344,
28 405-407, 420-429, 456-461, 468, 472-475, 706-709.)

1 The police discovered a cell phone lying on the floor near Alberto Flores' head.
2 The phone had no connection with any of the victims, but was registered to a Catalina
3 Salazar, who, as it turned out, was the girlfriend of Chico Hernandez. She testified that
4 she had opened an account on this cell phone in her name, but the phone was used by
5 Hernandez. On January 11, 2002, she had plans to go to Las Vegas with her family.
6 Hernandez was supposed to accompany her, but called that day to say he was enroute
7 to San Francisco. He told her not to go to Las Vegas with her family but to remain on
8 hand if he should call. He telephoned five or six times during the trip just to chat with
9 her. He said he was with other people. The last call was at about 3:30 p.m., after
10 which Hernandez telephoned again about 5 or 6 p.m., instructing her to cancel the cell
11 phone. He told her he had a fight and had dropped his phone at he scene. (RT 332,
12 505-506, 508-512, 761-762.) Salazar received further calls from Hernandez, who told
13 her that he was going to Tijuana. When she tried calling him again at the number from
14 which he made these later calls, she was told that he had gone to Mexico. She never
15 saw Hernandez again. (RT 513-514.)

16 Based on the various numbers contained in the memory of the cell phone found
17 in the apartment, the San Bruno detectives and investigators from the San Mateo
18 County District Attorney's office found themselves, on February 20, 2002, at an
19 apartment complex on Estara Avenue in Los Angeles intending to canvass the
20 occupants in three different apartments. (RT 276-277, 291, 551-552.) Before they
21 even entered the complex, Inspector Minahan noted a white Cadillac similar in
22 description to a vehicle reported to have been outside the San Bruno apartment about
23 the time of the shootings. Minahan asked a bystander, who owned the Cadillac. The
24 man turned out to be Raoul Campos's father, and he directed Minahan to his son in
25 apartment 7, which was one of the apartments the police intended to contact. (RT 278-
26 279, 291-293.)

27 Minahan and the other officers contacted Campos and informed them why they
28 were there. Campos was willing to talk, but not in front of his mother, who was

1 present in the apartment. He suggested that they go to the nearby Los Angeles police
2 station. There, the San Mateo officers were given permission to use the interview
3 room, which was equipped with video equipment. The interview of Campos was taped
4 and played to the jury. (RT 279-280, 293-294.)

5 The interview began with Campos admitting that he used to have a cell phone
6 with the number (323) 719-6967, but that it did not belong to him. The phone
7 belonged to Alfredo or Fredo, a long-time friend, whose last name Campos did not
8 know. (CT 999-1000.) He had known Fredo since childhood. Although Fredo had
9 moved at one point, he returned to the neighborhood about a year and a half earlier and
10 the two friends began hanging out again together. (CT 1001-1002.)

11 About four or five months earlier, Campos met through Fredo a man named
12 Chico, introduced to Campos as Fredo's cousin. Campos could see that Chico was a
13 coke user and once witnessed him actually selling it to someone. Chico kept asking
14 Fredo and Campos to sell cocaine for him, but Campos refused and urged Fredo to stay
15 away from Chico. (CT 1002-1004.)

16 One day, -- it was a Thursday or Friday¹ --, Campos was driving around in the
17 white Cadillac, which he had just bought from someone in the Valley. Chico and two
18 others got into the car. Chico directed Campos to a gas station offering to fill the tank.
19 According to Campos, this courtesy gave way to threat at the gas station when Chico
20 ordered him to get into the passenger seat because they were going to take ride. He
21 ordered Campos not to turn around and look at the two men in the back seat, but
22 Campos was certain that Alfredo was not one of them. Afraid that Chico was
23 "strapped", Campos complied, and found himself on a long road trip, with Chico
24 plying him with beer Chico stopped to buy along the way. (CT 1005-1007, 1010-
25 1011.)
26
27
28

¹ January 11, 2002 was a Friday.

1 With nothing to do but drink the beer, Campos paid no attention to the route,
2 though he remembered seeing a road sign for San Jose. When they arrived at some
3 apartments, Chico ordered him to stay in the car as he, Chico, retrieved something
4 from the trunk. After twenty minutes, Chico returned. The impatient Campos
5 remarked that Chico had brought him pretty far just to do a dope deal. Chico, who
6 looked panicked, told Campos to shut up. (CT 1007-1008.)

7 Pressured by the officers' expression of incredulity to the effect that Campos
8 was not telling them the whole truth, Campos conceded, "To tell the truth, some shit
9 went down man." (CT 1012.) Although Campos was not aware of what would happen
10 when they were driving up north, he heard Chico shouting "at some fool." Then he
11 heard some shots. Chico had killed the people inside the apartment. (CT 1012-1014.)
12 Elaborating on this new information, Campos revealed that they drove up with four or
13 five other men. Campos and one of the men waited outside while the others went
14 upstairs. According to Campos, he himself was "buzzed" from the beer and probably
15 drunk. He heard Chico talking to someone about money. This went on for about a
16 minute when Chico began demanding, "Where's my shit?" After this, Campos heard
17 firing from more than one gun. (CT 1014-1015.)

18 Inspector Cody, who was there with Minahan, then asserted that he knew that
19 Campos was not outside "around the corner," but that he was "right there, okay?", to
20 which Campos replied, "I was right there, yeah." (CT 1016.) He added that Chico had
21 killed the people inside the apartment, but when Cody asked, "Did you kill anyone?",
22 Campos replied, "Shit, not that I know of." (CT 1016.) As Cody kept pressing for an
23 unequivocal admission, Minahan began looking for a "Miranda" card, whereupon
24 Campos was advised of his rights. (CT 1016-1017.)²

25
26
27 ² Cody, who had administered the warnings, ascertained that Campos understood his
28 rights, but did not ask Campos expressly for a waiver. Instead, he simply continued
the interrogation. (CT 1017.)

1 What followed was a confused statement in which Campos explained that he
2 was “buzzed” from the beer. There was an argument over money, in which one of the
3 victims insisted he had paid Chico everything that was owed. Someone then tied up
4 the people in the apartment and shooting started with Chico killing the man with whom
5 he was arguing. However, one of the people in the apartment managed to charge
6 toward Campos. Campos believed that man was attacking him. Campos, who entered
7 the apartment without a gun, somehow obtained one and shot at his assailant three or
8 four times. (CT 1018-1040, 1064-1067, 1079-1080, 1082; RT 296, 496-498.)

9 Eventually, Campos admitted that Alfredo was also there. (CT 1045-10456,
10 1052-1053.) In fact, the entire odyssey began about noon, when he and Alfredo were
11 at the mall about to get something to eat, when Chico appeared and commandeered the
12 Cadillac at the gas station. Campos speculated that Alfredo must have telephoned
13 Chico on Campos’s cell phone. (CT 1072-1074.)

14 In describing the way back to Los Angeles, Campos related that somewhere in
15 San Jose the Cadillac ran out of gas. Campos left the car to cadge some money for
16 fuel. When he returned to the car, Chico, Alfredo, and one other man inexplicably
17 walked off. Campos speculated that Chico must have had a car ready, and noted in
18 fact that Chico owned a light blue Mercury minivan. (CT 1041-1042, 1049-1050.)
19 Campos and one of the other men known at “Reaper” returned together to Los
20 Angeles. Campos dropped Reaper off at an exit in the San Fernando Valley and then
21 proceeded back to his home in East Los Angeles. (CT 1057-1060, 1086-1087, 1090-
22 1091.)

23 The circumstantial evidence presented by the prosecution tended to show
24 planning for the January 11 “road trip” and Campos’s involvement in this planning.
25 Thus, Catalina Salazar testified that Chico Hernandez, at least as of November, 2001,
26 owned a mini-van. (RT 507-508.) Records established that title to the van was
27 transferred to Alfredo Valenzuela on December 6, 2001. (RT 556-557.) The Cadillac
28 that brought Campos to the particular attention of the northern California officers was

1 not, as Campos maintained, bought from some man in the San Fernando Valley, but
2 was transferred from Alfredo Valenzuela to Campos on December 10, 2001. (RT 557-
3 559.) After the police recovered the Cadillac and transported it from Los Angeles to
4 San Bruno, the car was searched and in the trunk was found a package of plastic zip
5 ties similar to those used at the crime scene to bind the hands and feet of the victims.
6 (RT 624.)

7 During the interrogation, Campos had identified a photograph of the "Reaper"
8 (CT 1039-1040), who, it turned out, was Lazaro Perez, a friend of Chico Hernandez,
9 with whom Hernandez shared an apartment in Southgate. (RT 500, 506.) According
10 to Wendy Gomez, who had met Perez in November, 2001, on January 6, 2002, Perez
11 told her he was going to make a trip to San Francisco on January 11 and invited her to
12 come with him. She declined the invitation (RT 516-517, 527-529), but agreed to his
13 request to transfer a van to her name. He told her she would eventually be contacted
14 by someone named Miguel in order to effect this transaction. (RT 517-518.)

15 On January 12, 2002, the van in question, which was the one owned by Chico
16 Hernandez and transferred to Alfredo Valenzuela on December 6, was videotaped by
17 surveillance cameras crossing the Mexican border at San Ysidro 4:15 a.m. (RT 507,
18 519, 539.) On January 15, Wendy Gomez was contacted by Miguel, who met her in
19 Paramount City, where they proceeded to a notary, who was paid off to approve the
20 signatures on the title transfer. Miguel was in fact Alfredo Valenzuela, and he left the
21 notary in the same van that now was registered to Ms. Gomez. (RT 519-527, 556-
22 557.) The van was eventually found abandoned in Mexico, and had a secret
23 compartment in the front, seemingly fitted for the secret transport of narcotics. (RT
24 559, 739-740.)

25 During the interrogation, Campos had referred to a cell phone, which was in his
26 name and which he, and then Chico Hernandez, used both on the drive north and the
27 drive back to Los Angeles. He also indicated that Alfredo had a cell phone in his own
28 name. (CT 1041-1044, 1060, 1072, 1088-1089.) Alvaro Acosta, a cousin of Alfredo

1 Valenzuela, testified that he had worked on commission as a salesman for Cingular
2 wireless. At the end of November, 2001, Valenzuela approached him to obtain a cell
3 phone. Acosta was unable to open an account because of Valenzuela's poor credit.
4 Acosta suggested that Valenzuela bring in someone else's identification and social
5 security number. (RT 697-698.) In early December, Valenzuela, accompanied by
6 Campos, returned with the identification and social security number of a Rosa
7 Martinez, and with this, Acosta provided both men with cellphones. (RT 698-704.)
8 Rosa Martinez, a complete stranger to anyone involved in the case, testified that on
9 December 2, 2001 she had inadvertently left her purse in a shopping cart, and the purse
10 was gone when she came back to retrieve it. The purse contained her identification
11 and social security number. (RT 542-547.)

12 The records from the cellphones obtained from Alvaro Acosta, and those
13 obtained by Catalina Salazar both for herself and for Chico Hernandez showed cross-
14 contacts between the dates of January 9 and January 11. (RT 766.) Also, by a
15 somewhat complex correlation of cell phone contacts between these various phones
16 and the location of the relays, the prosecution was able to establish that on January 11,
17 2002, the "road-trip" occurred in two separate vehicles, leaving Los Angeles about
18 9:30 or 10 in the morning and arriving in the Bay Area between 4 and 5 p.m. (RT 769-
19 777.)

20 In the interrogation, Campos admitted to shooting Emilio Flores when the latter
21 rushed at him, and four .22 caliber bullets, three of which were definitively fired from
22 the same gun, were recovered from Flores' body. But, according to the ballistics
23 expert, the same gun also fired at least two of three bullets recovered from Javier
24 Vaca's head, and the two bullets recovered from Alberto Munoz's head. A single
25 bullet recovered from Ramos's body was a .45 caliber. Based on all recovered bullets
26 and cartridges, at least four different guns had been fired at the crime scene. (RT 407,
27 425-427, 458-459, 470, 602-606, 613, 628-633.)
28

1 The circumstantial evidence was augmented by, as it were, quasi-direct evidence
2 from Alfredo Valenzuela himself through his hearsay statements made to Alvaro
3 Acosta, who had provided the cellphones to Valenzuela and Campos at the beginning
4 of December. Acosta testified that Valenzuela came into Acosta's store in mid-
5 January, 2002. He related to Acosta that he, Valenzuela, had been in northern
6 California, where something went wrong, and that four people had been killed. (RT
7 706.) Valenzuela, who was with Chico Hernandez, went into an apartment where the
8 residents were "acting dumb." Chico had wanted "the money", but was refused.
9 Chico then told "them" to tie up the men in the apartment. Chico's demand was still
10 refused all the while that the trussed up men were pleading for their lives. Chico then
11 gave the order to kill them. According to Acosta, Valenzuela said he wanted nothing
12 to do with killing and stepped outside as someone else began shooting the men in the
13 head. According to Acosta, Valenzuela described how he had seen two of the men
14 killed, how their heads bobbed when they were shot, and how they looked afterwards
15 as though they were sleeping. According to Acosta, the conversation was interrupted
16 because Acosta had to go back to work. (RT 706-709.)

17 Finally, the jury was played an audiotape of a monitored telephone call Campos
18 made from the San Mateo County jail to his family in Los Angeles on April 22, 2002.
19 (RT 804-807.) After talking to his mother, he asked to speak to his brother, Roberto.
20 (CT 1117-1118.) The following discussion was captured on tape:

21
22 "R [Raoul Campos]: How you doing in, in school and stuff?

23
24 "M [Roberto Campos]: Um, good.

25
26 "R: Are you sure?

27
28 "M: Yeah.

"R: You staying out of trouble?

1 "M: Yeah.

2 "R: What about everybody?

3 "M: They're cool.

4 "R: Okay. You going to your program regularly?

5 "M: Uh-huh.

6 "R: Serious?

7 "M: Oh, today? *Yo tengo, yo tengo todo planeado.* [I have, I have
8 everything planned.]

9 "R: Huh?

10 "M: I got everything planned.

11 "R: Okay, hey (unintelligible)

12 "M: Huh?

13 "R: You know that yellow booklet?

14 "M: Mmm-hmm.

15 "R: Where I got you know uh, Stephanie on it and everything,
16 about the emails and all that shit.

17 "M: Mmm-hmm.

18 "R: There's a paper that says 'the plan', something about \$50,000.
19 Rip that apart.

20 "M: Okay.

21 "R: Rip it out.

22 "M: Mmm-hmm.

1
2 “R: I don’t want it in there. Rip it out.

3 “M: Mmm-hmm.

4 “R: *Tíralo a la basura* [Throw it in the trash], I don’t care.

5
6 “M: Okay.

7 “R: But I don’t want it *porque si lo encuentran* [because if they
8 find it] I’m gonna get in deep shit.

9 “M: Okay.

10 “R: (unintelligible)

11
12 “M: Mmm-hmm.” (CT 1118-1119.)

13 Campos went on to ask his brother to send him “the two pink slips of my car” (CT
14 1120), and to tell “Dahlia” not to tell the investigator “about you know what . . .
15 “because I don’t want that involved, you know?” (CT 1122.)

16
17 **CLAIM FOR RELIEF**

18
19 **V.**

20 ***Miranda* warnings given to petitioner were ineffective because they were**
21 **given long after custodial interrogation had begun.**

22 1. It is clearly settled constitutional law as established by the Supreme Court of
23 the United States, that a criminal suspect, subjected to custodial interrogation by the
24 police, must be advised of his right to remain silent and his right to consult with an
25 attorney both before and during any such interrogation. (*Miranda v. Arizona*, 384 U.S.
26 436, 444 (1966).) For these purposes, “interrogation” “refers not only to express
27 questioning, but also any words or a actions on the part of the police . . . that the police
28 should know are reasonably likely to elicit an incriminating response from the

1 suspect.” (*Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).) “Custodial” means “any
2 situation in which ‘a person has been taken into custody or otherwise deprived of his
3 freedom of action in any significant way.’” (*Miranda, supra*, 384 U.S. at p. 444.)
4 Whether “custody” exists against this measure must be determined against an objective
5 legal standard: would a reasonable person in the suspect’s position have believed that
6 his freedom of action was limited in a manner akin to formal arrest. (*Stansbury v.*
7 *California*, 511 U.S. 318, 323-324 (1994); *Berkemer v. McCarty*, 468 U.S. 420, 442
8 (1984).)

9 2. During the interview at the Los Angeles police station, petitioner was not
10 advised of his *Miranda* rights until long after the custodial interrogation began. (CT
11 1017-1018.) On this basis, he made a motion *in limine* to suppress his incriminating
12 statements under the Fifth Amendment. He contended that the *Miranda* warnings
13 should have issued earlier and that their belated appearance, under the totality of
14 circumstances presented, served no protective function. (CT 463 *et seq.*) The trial
15 court found that the warnings were appropriately given at exactly the right moment
16 and denied the motion to suppress. (RT 85-88.)

17 3. The facts developed at the suppression hearing established that, based on
18 phone numbers obtained from the cell phone abandoned at the scene of the homicide,
19 Inspectors Cody and Minahan of the San Mateo District Attorney, and Sergeants
20 Campi and Officer Barraza of the San Bruno police, traveled down to Los Angeles to
21 canvass the addresses associated with these numbers and obtain whatever information
22 they could about the homicides. Cody himself had gone to Los Angeles on an earlier
23 week-long trip and spoke to something less than fifty people. The second trip to Los
24 Angeles found these officers on Estara Street on February 28, 2002, intending to
25 contact three apartments within one building, when Cody noticed a white Cadillac
26 with tinted glass and gold rims parked outside this very apartment building. This was
27 significant because witnesses at the San Bruno apartment had described such a car as
28

1 present at the scene in San Bruno at the time of the murders. (RT 15-19, 26, 27-29,
2 80.)

3 4. Cody asked a bystander if the latter knew who owned the car. This man, who
4 turned out to be petitioner's father, answered Cody's question and pointed out the
5 apartment where his son could be located. Significantly, the father had directed them
6 to one of the apartments they were intending to contact. Cody then asked the father
7 whether his son had taken any trips in the Cadillac, to which the father responded that
8 his son had taken a couple of day trips some time in January. When asked where, the
9 father answered, San Diego, but was not certain. (RT 49-50, 82-83.)

10 5. The officers, who were in plain clothes and driving an unmarked car that day,
11 contacted petitioner inside the apartment. Cody informed petitioner that they were
12 investigating a homicide in northern California. Petitioner, desiring privacy from the
13 rest of his family, directed the officers to his bedroom. Petitioner seemed to know
14 something about the matter, so Cody suggested that they all go to a nearby park to talk
15 more freely. It was petitioner who suggested a nearby LAPD substation. Petitioner
16 agreed to go in the car driven by the officers and he even directed them to the
17 substation. In the car, petitioner exchanged small talk with Barraza. At no point did
18 any officer mention any details about the crime to petitioner. (RT 20-23, 50-51, 62-63,
19 74, 83.)

20 6. At the station, Cody introduced himself to the local officers and obtained
21 permission to use the interrogation room. Unknown to petitioner, the room was
22 monitored for videotape, and this was set up before petitioner entered. Once inside,
23 petitioner sat at a table; next to him was Inspector Cody; and opposite him sat
24 Inspector Minahan. Sergeant Campi was also in the room but sat off to the side taking
25 notes. Officer Barraza was down the hall in another room, monitoring the videotaping.
26 (RT 24, 59, 71, 84.) Minahan spoke first, making a record of the time, place, and
27 persons present, after which he addressed petitioner:
28

1
2 "IM [Inspector Minahan]: One thing we'll get straight okay, is
3 we're not going to bullshit each other. We're not going to play around.
4 We're just going to get right to the heart of the matter.

5 "RC [Raoul Campos]" Oh yeah.

6 "IM: Okay? And one of the things we do with people is we spend
7 all day with them and we're not going to waste your time spend all day
8 with you.

9 "RC: Oh yeah I know.

10 "IM: But the reasons we spend all day is because if we're not
11 asking the exact right question, they don't give us the right information.

12 "RC: Right, I--

13 "IM: But what you can do from the get go here is you can tell us
14 everything you know about this.

15 "RC: Yeah, yeah I'm gonna tell you everything man.

16 "IM: So when we split at the end of the day, there's no more
17 reason for us to contact Raoul Campos.

18 "RC: Okay.

19 "IM: Capice? You got that?

20 "RC: Yeah. Yeah I got it." (CT 865-866.)
21
22

23 7. Clearly at this point this was not a custodial interrogation. Petitioner had
24 voluntarily gone to the LAPD substation with the officers in order to give what
25 appeared to be a witness statement. Nonetheless, it should be noted that 1) the
26 officers knew at this point that petitioner owned a Cadillac consistent in appearance
27 with one seen in San Bruno at the time of the murders; 2) that the officers also knew at
28 this point that petitioner knew something about these murders; and 3) that Minahan

1 addressed petitioner as a witness, but in a way that indicated a belief that petitioner
2 was a suspicious witness with perhaps some motive to prevaricate or lie.

3 8. The questioning then started with Minahan asking about the cell phone
4 number (323) 719-6967, which petitioner admitted used to be his number. However,
5 the phone was owned by his friend Fredo, whose last name petitioner did not know.
6 (CT 866.) Cody then interrupted suggesting that the better approach would be to let
7 petitioner give his story without questions: "Why don't you just go ahead and tell us
8 where, just start, just start rolling." (CT 866.) Petitioner, after asking and being
9 assured by both Cody and Minahan that the interview was not being taped (CT 867),
10 then gave his first version, which was recounted in the statement of facts: he met
11 Chico through Fredo; that Chico was cocaine dealer, with whom petitioner wanted
12 nothing to do, and about whom petitioner warned Fredo; that Chico, one day, simply
13 got into petitioner's Cadillac with two other men; that Chico, with an implied threat,
14 commandeered the Cadillac for a drive to northern California; that they stopped at
15 some apartments; that Chico retrieved something from the trunk of the Cadillac; that
16 Chico went upstairs for fifteen or twenty minutes, leaving petitioner downstairs in the
17 car; and that when Chico returned to the Cadillac, petitioner's expressed annoyance at
18 having been dragged along on some drug deal elicited a rebuke from Chico and a
19 warning to petitioner to shut up. (CT 871-874.)

20 9. Thus, at this point, petitioner provided a definitive connection between the
21 Cadillac and the crime. Even more, petitioner raised the distinct suspicion that he,
22 petitioner, at least aided and abetted in a drug deal and perhaps in the four murders.
23 That this point in the interview was a significant crux was recognized by Inspector
24 Cody, who interjected:

25
26 "IC [Inspector Cody]: Raoul, are you scared now?

27
28 "RC: Tell you the truth, I am cause --

1
2 "IC: Okay, well I'm telling you –

3 "RC: -- all this bullshit eh.

4 "IC: -- is, you see, you know we showed up at your house for a
5 reason right.

6 "RC: Oh yeah. (unintelligible) I know you show up for a reason.

7
8 "IC: Let me tell you something. And you know like, when you go
9 to that complex?

10 "RC: Yeah.

11 "IC: A big apartment complex, right? And ah, all those eyes
12 looking around.

13 "RC: Oh yeah, yeah.

14 "IC: So, remember that, I want you to keep that in your head . . .

15 "RC: In my head –

16
17 "IC: Okay? So when you tell about that one particular part. It's
18 the whole truth okay?

19 "RC: (unintelligible)

20 "IC: (unintelligible) I'm trying to tell you something. If things
21 went to shit in there, okay? Now's the time to hear about it. I'm telling
22 you.

23 "RC: Oh yeah." (CT 874.)
24

25 10. Petitioner then had admitted that he was with Chico Hernandez and two
26 others in the car used to drive from Los Angeles to San Bruno where the murders
27 occurred. Inspector Cody expressed disbelief that this was the entire story and
28

1 pressured petitioner with the warning, "Now's the time to hear about it. I'm telling
2 you."

3 11. At this point, a reasonable person in petitioner's position would not believe
4 he was free from restraint and that he was not under the effective equivalent of formal
5 arrest. This is true here especially in light of Cody's clear implication that the police
6 had evidence incriminating petitioner and knew what had occurred.

7 12. The custodial interrogation continued. While petitioner insisted that Chico
8 had taken petitioner to northern California, and that petitioner, waiting downstairs in
9 the car, saw nothing, Cody began asking specific questions about the length of the
10 drive and the number of people in the car. Minahan interjected in this exchange his
11 own incredulity that in a six hour drive petitioner never turned around to see who was
12 in the back seat. (CT 875-876.) After the officers pressed petitioner unsuccessfully
13 about the presence of Fredo (CT 876), the following exchange occurred:

14
15 "IC: Okay, when we went to your place.

16
17 "RC: Yeah.

18 "IC: You said you'll be totally honest. Okay?

19 "RC: Yeah I totally am. That's what I said, you know what, let's
20 get out of here.

21 "IC: We're interviewing you as a witness right now.

22
23 "RC: Yeah that's what I told you when I was in my house, I told
24 you (unintelligible)—

25 "IC: Okay, but you know what's the most important thing Raoul?

26 "RC: No.

27 "IM: Truth
28

1 "RC: That's what I'm saying.

2 "IC: Not half the truth. All of the truth, okay? 'Cause you know
3 all the stuff? I ain't going to bullshit you. You know the stuff we told
4 you about people seeing stuff?

5 "RC: Yeah.

6 "IC: People saw the Caddy pull up in front of the place.

7 "RC: Yeah I know people saw the Caddy. That's what I'm saying.

8 "IC: People saw more than one person get out of that Caddy.
9 Okay?

10 "RC: It was like I told you there was two other people.

11 "IC: That's not what you told us man. You said there were two
12 other people in the Caddy.

13 "RC: That's what (unintelligible)

14 "IC: Now the people we're talking about saw a particular number.
15 They're very clear. Okay? So what I'm telling you is, if some, if you are
16 saying that you didn't know everything that was going to happen.

17 "RC: Yeah.

18 "IC: I'm gonna believe you.

19 "RC: Yeah, I'm telling you right now I didn't know what the fuck.

20 "IC: I need to know the whole shit because, if something went on
21 in that apartment, and I do believe maybe that it was an accident, it wasn't
22 meant to happen and you were there and you go oh fuck. Now's the time.
23 'Cause this is your one big crystal opportunity to be totally truthful. You
24 understand what, what I'm saying to you dude?

25 "RC: Yeah, (unintelligible), wait, wait, wait, like I told you, I don't
26 like to bullshit eh.
27
28

1 "IC: Okay, now's the time now.

2 "IM: Now's it, now's your time man. Go.

3 "IC: Did it go to shit inside there?

4 "RC: To tell the truth, some shit went down man.

5 "IC: I know.

6 "RC: Shit went down.

7 "IC: Okay. Did you really know, when you were coming up, did
8 you know what was going to go on up there or did he just say –

9 "RC: No.

10 "IC: -- take a road trip?

11 "RC: I didn't know what the fuck was going on. He said you
12 know what (unintelligible) car (unintelligible).

13 "IC: Uh, I'm going to tell you that the information we have is what
14 happened up there. Not necessarily wasn't supposed to happen but the
15 problem is, is with you not being a hundred percent, that ain't gonna do
16 you that good, okay?

17 "RC: Yeah.

18 "IC: So you said you know some stuff, and we know what kind of
19 shit went on, okay? You need to be totally truthful my friend.

20 "RC: Can I ask a couple of questions? You know what, tell you
21 the truth, it ain't worth it for this guy. I don't even know this guy. I don't
22 want to go fucking, this jail for this fool.

23 "IC: That's, and that is why we're here. We want to hear the
24 whole truth from you.

1 "RC: Can I say, can I ask something, you know, I say
2 (uintelligible) I'm telling you, I'm telling you everything I tell you
3 everything. And I am gonna tell you the truth, eh.

4 "IC: Okay.

5 "RC: I don't want to fucking, because this fool like I'm saying
6 ain't worth it.

7 "IC: Okay.

8 RC: I didn't even know this fool. He ain't no friend of mine, you
9 know. Fucking is getting me into bullshit. Now, if I said anything
10 (uintelligible) what's gonna happen to me?

11 "IC: We'll make some decisions, okay? We'll make some
12 decisions, but you need to say the truth. When I tell you there's one
13 opportunity, I'm saying there's one opportunity.

14 "IM : This is it.

15 "IC: You know, I know you're scared Raoul, okay?

16 "RC: Okay.

17 "IC: Okay? And I know some shit happened and maybe you didn't
18 expect it to happen, okay?

19 "IM: But that's what we need to hear now.

20 "IC: Right.

21 "IM: So you're on man." (CT 876-878.)
22
23

24 13. This exchange is virtually self-explanatory and requires little or no gloss to
25 highlight its legal significance. Petitioner and the officers themselves, as reasonable
26 men, all by now understood and all but expressed the belief that petitioner was *not* now
27 free to leave until he explained all these incriminating circumstances in a believable
28

1 manner. This is manifest in the officers' insistence that *now* was the time to clear
2 himself, and this was the *one* opportunity to do so. For his part, petitioner evinced a
3 correct estimate that he was going to jail unless he cleared things up. The gaping hole
4 in this entire exchange is defined by the absence of any admonition from Cody or
5 Minahan that they indeed were not necessarily trying to clear things up favorably for
6 petitioner, which is to say that the missing element in this exchange were the *Miranda*
7 warnings.

8 14. The further course of the questioning only strengthens this conclusion.
9 When Minahan told petitioner, "So you're on man," petitioner offered that Chico was
10 "the one that killed 'em." (CT 879.) Petitioner further offered that he heard Chico
11 "shouting at some fool," after which petitioner heard some shots. (CT 879.) Cody
12 found this unsatisfactory: "You know what? I know that. You know why you know,
13 you're trying Raoul, you're trying. But you got to be totally truthful my friend.
14 Because you know what? You ain't being totally truthful about what happened inside
15 that apartment and where you were standing." (CT 879.) When petitioner began
16 repeating the same story (CT 879-880) Minahan broke in, "And you were standing
17 inside the apartment at this time?", to which petitioner admitted, "To tell the truth,
18 yeah." (CT 880.)

19 15. Thus, the statements preceding the *Miranda* warnings should have been
20 suppressed. But because of the belatedness of the *Miranda* warnings, the statements
21 after they were given were also constitutionally vitiated and should have been
22 suppressed. The governing legal principle is as follows:
23

24 "Just as 'no talismanic incantation [is] required to satisfy
25 [*Miranda's*] strictures,' [citation] . . . , it would be absurd to think that
26 mere recitation of the litany suffices to satisfy *Miranda* in every
27 conceivable circumstance. 'The inquiry is simply whether the warnings
28 reasonably conve[y] to [a suspect] his rights as required by *Miranda*.'
[Citation.] The threshold issue when interrogators question first and warn

1 later is thus whether it would be reasonable to find that in these
2 circumstances the warnings could function 'effectively' as *Miranda*
3 requires. Could the warnings effectively advise the suspect that he had a
4 real choice about giving an admissible statement at that juncture? Could
5 they reasonably convey that he could choose to stop talking even if he had
6 talked earlier? For unless the warnings could place a suspect who has just
7 been interrogated in a position to make such an informed choice, there is
8 no practical justification for accepting the formal warnings as compliance
9 with *Miranda*, or for treating the second stage of the interrogation as
10 distinct from the first, unwarned and inadmissible segment." (*Missouri v.*
11 *Seibert*, 542 U.S. 600, 611-612 (2004).)

12 16. When one applies this principle to the further interrogation, in which the
13 officers finally give petitioner *Miranda* advisements, it becomes clear that these
14 advisements were only an empty formality not only because they were belated but
15 because of the manner in which they were given and minimized.

16 17. The full exchange up to and through the giving of the *Miranda* advisements
17 began when Cody interrupted petitioner's attempt to explain how he had only "heard"
18 shots even though he was present inside the apartment (CT 880-881):

19 "IC: Okay, all I'm telling you is, you need to be more up front.
20 You see what I'm saying? I mean, because we know what happened in
21 the apartment. I'm done, we're, we're talking to people my friend.

22 "RC: Oh I know it (unintelligible).

23 "IC: So the thing is and you ain't sitting, you know, outside,
24 around the corner, you're right there, okay?

25 "RC: I was right there, yea.

26 "IC: I'm gonna give you a clue, okay?

1 "RC: I'm telling you the truth sir. This guy, he's the one who
2 killed them, man. I saw this guy, and you know, like I said, I was already,
3 we were drinking beers, you know.

4 "IC: Did, let me see —

5 "RC: I was fucking buzzing, drunk, I'm not sure.

6 "IC: Did you kill anyone?

7 "RC: Shit, not that I know of.

8 "IM: That's not the right answer.

9 "IC: Okay, I know things happen.

10 "RC: (unintelligible) Oh I know things happen.

11 "IC: Things happen, okay?

12 "IM: You had, you had a gun when you went in, Chico gave you a
13 gun when he walked in the door.

14 "RC: I told you it's not when he's there. I, I saw the other guy that
15 he fought with us. He took out a, a big gun. He took out a big gun. But I
16 was already in a buzzing, nervous. I'm not sure what the, all I know that
17 shots went off. Went off and—

18 "IM: Looking for a card.

19 "IC: Yeah. I got one.

20 "IC: Okay, this is what I want. I need you to be totally up front
21 man. Do you understand me?

22 "RC: Yeah, I understand you. I'm up front with you sir.

23 IC: I mean totally, okay?

24 "RC: Yeah.

1 "IC: I'm going to read you your rights, okay? Oh, all I'm going to
2 tell you though, just listen to them and be honest, okay? Alright. You
3 have the right to remain silent. Anything you say can and will be used
4 against you in a court of law. You have the right to talk to lawyer and
5 have him present with you while you're being questioned. If you cannot
6 afford to hire a lawyer, one would be appointed to represent you before
any questioning if you wish one. Do you understand each of these rights
that I've explained to you?

7 "RC: Yes.

8 "IC: Okay.

9 "IM: Okay, now –

10
11 "IC: Raoul, my friend. I'm going to tell you something, okay man?
12 No. B.S.

13 "RC: Alright, okay.

14 "IC: I believe you. And I know this wasn't your idea.

15 "RC: Oh I know that.

16
17 "IC: And I know that you got in caught in the middle of something.
18 That went to shit. Okay?" (CT 881-882.)³

19
20 18. There are two considerations crucial to evaluating the effectiveness of the
21 warnings here. First, petitioner had already made severely incriminating admissions
22 that his car had transported the killers to the scene of the murder; that petitioner
23 himself was physically present inside the apartment where the murders occurred; and
24 that petitioner may have fired a gun inside that apartment at the time of the murders.
25 The need to explain these facts, which might not have been elicited had warnings been
26

27 ³ The interrogation went on after this with petitioner admitting to his having shot
28 Emilio Flores. The entire interrogation took two hours and 12 minutes, at the end of
which petitioner was formally arrested. (RT 84; CT 961 *et seq.*)

1 given in a more timely fashion, served to render *belated* warnings without any real
2 protective purpose. (See *Missouri v. Siebert, supra*, 542 U.S. at pp. 612-614.)

3 19. Secondly, and consistently with the first consideration, Cody's manner of
4 interjecting the warnings conveyed the clear implication that they were a superfluous
5 formality and that petitioner of course was going to continue to talk to the officers:
6

7 "IC: Okay, this is what I want. I need you to be totally up front
8 man. Do you understand me?

9 "RC: Yeah, I understand you. I'm up front with you sir.

10 "IC: I mean totally, okay?

11 "RC: Yeah.

12 "IC: I'm going to read you your rights, okay? *Oh, all I'm going to*
13 *tell you though, just listen to them and be honest, okay?* Alright. You
14 have the right to remain silent. . . ." (CT 882., emphasis added.)
15

16 20. Of course the admonition to be honest presupposed that petitioner was
17 going to waive his rights, a presupposition Cody did not even bother to verify:
18

19 "IC: Do you understand each of these rights that I've
20 explained to you?

21 "RC Yes.

22 "IC: Okay.

23 "IM: Okay, now –

24 "IC: Raoul, my friend. I'm going to tell you something, okay man?
25 No. B.S.

26 "RC: Alright, okay.
27
28

1 "IC: I believe you. And I know this wasn't your idea.

2 "RC: Oh I know that.

3 "IC: And I know that you got in caught in the middle of something.
4 That went to shit. Okay?" (CT 882.)

5
6
7 21. If further proof is required that the *Miranda* warnings when and as given
8 were purposeless and ineffective, one need only consult the later part of the
9 interrogation. Once Minahan and Cody obtained petitioner's unequivocal admission
10 that he had shot Emilio Flores and petitioner's version of the strange trip back to Los
11 Angeles, they left the room, leaving petitioner alone with Sergeant Campi. (CT 953;
12 RT 60.) At this point, petitioner asked Campi, "Do I still need a lawyer or something?
13 No? Not really?" (CT 954.) Campi did not answer. (RT 61, 63-64.) When Minahan
14 and Cody returned, Cody said, "A few more questions for you that we like to talk
15 about," to which petitioner responded "I got a friend, he's a lawyer. I don't know do I
16 really need one or" at which point static obliterated the rest of the sentence, and
17 none of the officers present remembered what was said. (CT 961; RT 58, 62, 70-73.)
18 These questions need not have been asked if the *Miranda* warnings had been
19 effectively given in a timely fashion.⁴

20 22. The admission of petitioner's extrajudicial statements was prejudicial. The
21 axis on which the prosecution's case against petitioner revolved was petitioner's
22 admission that he had shot Emilio Flores. This was so because it not only established
23 petitioner as the direct perpetrator of the homicide of Flores, but also the direct
24 perpetrator of the homicide of Vaca and Munoz, who were pierced by bullets shot from
25 the same gun that fired the fatal bullets into Flores. Without petitioner's admission of
26 this the prosecution's case against petitioner would have rested on circumstantial

27
28 ⁴ The interrogation ended with petitioner's formal arrest. (CT 961 *et seq.*) The entire session took two hours and twelve minutes. (RT 84.)

1 evidence that petitioner, involved somehow in the event, was not dispositively
2 involved in criminal liability for the murders, since the evidence allowed for a
3 conclusion that petitioner did not know Chico Hernandez's full purpose. The
4 constitutional error thus had a substantial and injurious impact on the outcome of
5 petitioner's trial. (*Brecht v. Abrahamson*, 507 U.S. 619, 637-638 (1993).)

6 7 8 EXHAUSTION ALLEGATION

9 VI.

10 1. The claim for relief presented in this petition have been presented both to the
11 California Court of Appeal and to the California Supreme Court, and all state remedies
12 have been exhausted. No other petition or appeal is currently pending in any court in
13 regard to the judgment of conviction now under attack.

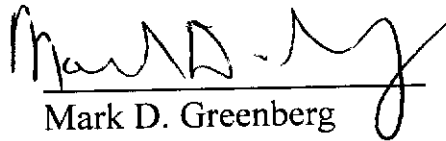
14 2. However, if this Court deems that any claim for relief presented in this
15 petition has not been exhausted, Petitioner would request that proceedings in this
16 Court be stayed and held in abeyance pending Petitioner's seeking of relief in the
17 California Supreme Court for any unexhausted claim.
18
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PRAYER FOR RELIEF

Wherefore, petitioner prays that this Court grant him the relief to which he may be entitled in this proceeding, and if to do so, proceedings must be stayed and held in abeyance pending state exhaustion of any unexhausted claim, petitioner would request that this also be granted.

Dated: August 4, 2008

Respectfully submitted,

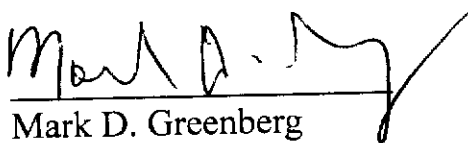

Mark D. Greenberg
Attorney for Petitioner

VERIFICATION

I, Mark D. Greenberg, declare:

I am attorney for petitioner in the above-titled action. I have read the foregoing allegations contained in this petition for a writ of habeas corpus. These allegations and representations are, of my knowledge true and correct. My offices are in Alameda County; consequently, I am making this verification in place of petitioner because petitioner is incarcerated in Del Norte County, and for that reason cannot personally make this verification.

I declare under penalty of perjury that this declaration is true and correct and was executed on August 4, 2008 at Oakland, California.



Mark D. Greenberg
Attorney for Petitioner

[CCP Sec. 1013a(2)]

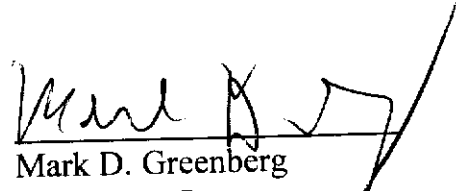
The undersigned certifies that he is an active member of the State Bar of California, not a party to the within action, and his business address is 484 Lake Park Ave., No. 429, Oakland, California; that he served a copy of the following documents:

FEDERAL WRIT OF HABEAS CORPUS

by placing same in a sealed envelope, fully prepaying the postage thereon, and depositing said envelope in the United States mail at Oakland, California on August 4, 2008, addressed as follows.

California Attorney General
455 Golden Gate Avenue, Ste. 11000
San Francisco, CA 94102-3664

Raul Campos, V68975
Pelican Bay State Prison
P.O. Box 7000
Crescent City, CA 95531-7000



Mark D. Greenberg
Attorney at Law